

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE MEADOWS OWNERS
ASSOCIATION,

Plaintiff,

v.

JAYAKRISHNAN K. NAIR ; et al.,

Defendants.

CASE NO. C19-01596-RAJ

**ORDER REMANDING ACTION TO
SNOHOMISH COUNTY SUPERIOR
COURT**

This matter is before the Court on Defendants’ response to the Court’s order to show cause. Dkt. # 17. For the following reasons, the Court **REMANDS** this action back to Snohomish County Superior Court.

I. BACKGROUND

Plaintiff, The Meadows Owners Association (“Plaintiff” or the “Association”), is a non-profit corporation that holds a lien over the property at issue in the underlying action. Dkt. # 1-2 at ¶ 1.1. Plaintiff initially brought this lien foreclosure action against Defendant Jayakrishnan K. Nair and the other record owners of the Property (collectively “Defendants”) in Snohomish County Superior Court on May 22, 2017.

Dkt. # 1-2 at ¶ 1.2. On October 7, 2019, Defendants removed the action to federal court. Dkt. # 1-1. Defendants also submitted an application to proceed *in forma pauperis*. Dkt.

1 # 1. The Honorable Mary Alice Theiler recommended that Defendants’ application be
2 denied. Dkt. # 5. On March 2, 2020, the Court adopted Judge Theiler’s Report and
3 Recommendation and denied Defendants’ IFP application. Dkt. # 15. The Court also
4 ordered Defendants to show cause as to why this case should not be dismissed for lack
5 of jurisdiction and why removal of this action was timely under 28 U.S.C. § 1446. *Id.*

7 II. DISCUSSION

8 A strong presumption against removal exists, and the removing defendant bears
9 the burden of establishing that removal is proper. *Gaus v. Miles, Inc.*, 980 F.2d 564,
10 566-67 (9th Cir. 1992). If there is any doubt as to the right of removal, federal
11 jurisdiction must be rejected. *Id.* at 566. Under 28 U.S.C. § 1446(b)(1), a defendant
12 must generally file a notice of removal within 30 days of original service on the
13 defendant. Removal is also permitted within 30 days after a defendant’s receipt of an
14 “amended pleading, motion, order or other paper from which it may first be ascertained
15 that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3). In
16 addition, “[a] case may not be removed under subsection (b)(3) on the basis of
17 jurisdiction conferred by section 1332 more than 1 year after commencement of the
18 action, unless the district court finds that the plaintiff has acted in bad faith in order to
19 prevent a defendant from removing the action.” 28 U.S.C. § 1446(c)(1).
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1 Based on the record before the Court, it appears that this action was initially
2 brought in May 2017. Dkt. # 1-2.¹ Defendants argue that removal was timely because
3 they did not learn about the underlying state court action until April 2019. Dkt. # 17 at
4 2. Because they filed for removal in October 2019, within a year of “learning” of the
5 state court action, Defendants believe that removal was timely under 28 U.S.C. §
6 1446(c)(1). *Id.*

8 Defendants misunderstand the rule. Section 1446(c)(1) provides: “A case may
9 not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section
10 1332 more than 1 year after commencement of the action, unless the district court finds
11 that the plaintiff has acted in bad faith in order to prevent a defendant from removing the
12 action.” 28 U.S.C. § 1446(c)(1) (emphasis added). It appears that Defendants are
13 interpreting Section 1446(c)(1) as imposing a separate one-year deadline for removal of
14 diversity actions. This is incorrect. A notice of removal based on diversity is still
15 subject to the 30-day requirement outlined in Section 1446(b)(3). Section 1446(c)(1)
16 simply imposes an additional one-year outer limit for removal of diversity actions under
17 Section 1446(b)(3).
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21 Because Defendants fail to articulate any “amended pleading, motion, order or
22 other paper” or “bad faith” justifying the delay in filing for removal the Court finds that
23 Defendants’ removal was untimely under 28 U.S.C. § 1446(b)(1) and 28 U.S.C. §
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¹ The Court may take judicial notice, *sua sponte*, of a “fact not subject to reasonable dispute” at any stage of the proceeding. This includes records of other state or federal court proceedings. *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

1 1446(b)(3). Accordingly, the Clerk is directed to **REMAND** this action to Snohomish
2 County Superior Court. All remaining motions pending in this action are
3 **TERMINATED** as moot. Dkt. ## 12, 13.

4 DATED this 18th day of March, 2020.

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7 The Honorable Richard A. Jones

8 United States District Judge
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